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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:
ANTHONY SCOTT LEVANDOWSKI,
Debtor.

ANTHONY LEVANDOWSKI, an individual,
Plaintiff,
v.
UBER TECHNOLOGIES, INC.
Defendant.

Bankruptcy Case
No. 20-30242 (HLB)
Chapter 11

Adv. Pro. No. 20-03050 HLB)

**DEBTOR'S FIRST AMENDED
COMPLAINT FOR DECLARATORY
RELIEF, SPECIFIC PERFORMANCE,
AND DAMAGES; AND OBJECTION TO
CLAIM**

1 Anthony Levandowski, as debtor and debtor in possession in the above-captioned chapter
2 11 case (the “Chapter 11 Case”), and as plaintiff in the above-captioned adversary proceeding
3 (the “Adversary Proceeding”), alleges in this First Amended Complaint upon knowledge of his
4 own acts and upon information and belief as to other matters, as follows:

5 **NATURE OF CLAIM**

6 1. This is an objection to the allegations made by Uber Technologies, Inc. (“Uber”) in its Proof of Claim (Claim 8-1) filed on July 6, 2020 (the “Proof of Claim”) and an action to
7 enforce the promises Uber made to Mr. Levandowski to induce him to sell to Uber his self-
8 driving companies and technology and to lead its autonomous vehicle program.

9 2. Mr. Levandowski is one of the world’s leading experts in autonomous vehicle
10 technology. Mr. Levandowski is a star engineer who built one of the first self-driving
11 motorcycles (which is in the Smithsonian today), one of the first self-driving cars, and one of the
12 first self-driving freight trucks. He was a founding member of Google’s autonomous car
13 initiative, Project Chauffeur, and played an integral part in driving the technology development
14 for Project Chauffeur.

15 3. Before his departure, Mr. Levandowski told Google about his intention to leave
16 Google to start a new self-driving start-up.

17 4. Larry Page, the then-CEO of Google, threatened Mr. Levandowski and stated that
18 if Mr. Levandowski worked for a competitor on self-driving technology, he would face very
19 negative consequences. Mr. Levandowski was also aware that Mr. Page had great animosity
20 toward Uber and Travis Kalanick, Uber’s then-CEO. In addition, Mr. Levandowski was aware
21 that Mr. Page and other executives at Google viewed Uber as a very significant competitor.

22 5. In early 2016, Mr. Levandowski left Google and helped start Ottomotto LLC
23 (“Otto”) a self-driving trucking company.

24 6. Uber expressed an interest in acquiring Otto to accelerate its self-driving program
25 and to compete with Google, whom Mr. Kalanick believed to be an existential threat to Uber.
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1 7. Because of Mr. Page's threats and known hostility towards Uber, Mr.
2 Levandowski insisted that Uber indemnify him against claims that may be brought by Google as
3 a condition to entering into any relationship with Uber.

4 8. In fact, Mr. Levandowski explained to Uber multiple times that he believed
5 Google would likely sue him if he joined Uber. Mr. Levandowski was particularly concerned
6 because he did not have the ability to defend himself if one of the largest companies in the world,
7 with essentially unlimited resources, came after him.

8 9. In addition, because Mr. Levandowski left Google to work on autonomous
9 trucking, Mr. Levandowski conditioned the sale of Otto on Uber supporting his self-driving
10 trucking business.

11 10. As part of the transaction for the acquisition of Otto, Uber agreed to indemnify Mr.
12 Levandowski for claims Google might raise against him. These claims included claims Google
13 might assert for breach of fiduciary duty, breach of the duty of loyalty, breaches of various
14 restrictive covenants, and trade secret misappropriation. **Exhibit A** is a redacted copy of the
15 Indemnification Agreement dated April 11, 2016 between Uber and Mr. Levandowski.

16 11. Under the Indemnification Agreement, Uber agreed to pay for Expenses incurred
17 by Mr. Levandowski—defined in the Agreement to include attorneys' fees and costs relating to
18 defense of any claim brought by Google, as well as any award or judgment in Google's favor.
19 *See* Ex. A at 3, § 2.3.

20 12. As part of the acquisition of Otto, Uber also agreed to support Mr. Levandowski's
21 trucking business objectives by either creating a new business unit within Uber (wherein Mr.
22 Levandowski would have a leadership role) or allowing Mr. Levandowski to create a trucking
23 business outside of Uber.

24 13. After Uber acquired Otto, Mr. Page followed through on his threats against Mr.
25 Levandowski. In October, 2016, Google initiated two arbitration proceedings against Mr.
26 Levandowski. Mr. Levandowski timely requested indemnity from Uber under the
27 Indemnification Agreement, and Uber accepted its obligations. Consequently, Uber paid for and
28 controlled the defense of Mr. Levandowski for nearly three years. Initially, Mr. Levandowski

1 was represented by the same counsel that represented Uber. During the course of a separate
2 litigation, a trade secrets dispute with Waymo LLC, a Google affiliate, Uber's then-counsel
3 determined it could not jointly represent Mr. Levandowski (or his company, Otto Trucking) and
4 Uber. Uber subsequently selected and hired separate counsel for Mr. Levandowski. Uber
5 continued to direct the defense strategy and continued to make payments for the cost of defense
6 after replacement counsel was selected. Uber also exercised its right to direct and control Mr.
7 Levandowski's defense of the arbitration proceeding through the final award and including all
8 settlement discussions with Google.

9 14. After Mr. Levandowski relied on Uber's control and direction for years and after
10 an unfavorable Interim Award issued, Uber purported to rescind the Indemnity Agreement and
11 made clear that it would not pay for any additional Expenses incurred by Mr. Levandowski after
12 September 25, 2016.

13 15. In addition, while in control of Mr. Levandowski's defense and settlement
14 prospects with Google, Uber worked out its own settlement with Google's subsidiary, Waymo
15 LLC ("Waymo") to resolve a trade secret dispute between them relating to the same underlying
16 events. Upon information and belief, the terms of that settlement included an agreement that
17 Uber would never hire or work with Mr. Levandowski again, which resulted in Uber also
18 reneging on its promises to support Mr. Levandowski's trucking business.

19 16. Uber's recently filed Proof of Claim has made the Indemnification Agreement, and
20 Uber's actions related to its acquisition of Otto, central to this Chapter 11 Case.

21 17. In particular, the Proof of Claim alleges that because Uber purportedly rescinded
22 the Indemnification Agreement, not only does Uber not have any obligation to indemnify Mr.
23 Levandowski but it also is a creditor of Mr. Levandowski. Uber seeks payment for legal fees
24 and costs it provided under the Indemnification Agreement and contribution for the settlements it
25 has negotiated for its own benefit and the benefit of Mr. Levandowski's cofounder, the current
26 lead of Uber's trucking business.

27 18. However, Uber asserts claims that, upon information and belief, Uber released as
28 part of the settlement with Waymo.

1 19. Uber also has no basis to rescind the Indemnity Agreement. Uber has set forth
2 numerous theories to back out of the deal it struck, but two issues appear to be core: (1) a claim
3 that Mr. Levandowski engaged in fraud and (2) a claim that Mr. Levandowski has pled to one
4 count of trade secret misappropriation in a criminal indictment filed by the United States
5 Attorney.

6 20. First, there was no fraud. Uber was aware of Mr. Levandowski's conduct through
7 the extensive investigation it conducted prior to and after entering into the indemnity agreement
8 with him, and long before it purported to rescind. To the extent Uber claims it was unaware of
9 certain facts, those facts were not material and were fully available to Uber had they cared to
10 look more carefully at the materials it was provided by Mr. Levandowski. In fact, Mr.
11 Levandowski repeatedly told Uber to search those devices for the most accurate information.

12 21. Second, Mr. Levandowski did not make any misrepresentations regarding any
13 theft of trade secrets. Mr. Levandowski has plead guilty to trade secret misappropriation with
14 respect to one file he accessed after leaving Google. As for that one file, Uber knew the file's
15 name, that Mr. Levandowski kept that file, that he accessed it after he left Google, the date he
16 accessed it, and through its due diligence firm, the contents of that file.

17 22. Mr. Levandowski therefore commenced the Adversary Proceeding to obtain
18 declaratory relief as to the impact of Uber's purported rescission on the parties' respective rights
19 and obligations, to enforce Uber's obligations arising from the Otto transaction, and to disallow
20 the Proof of Claim.

21 **JURISDICTION AND VENUE**

22 23. The Adversary Proceeding arises in and relates to the Chapter 11 Case. The
23 Court has jurisdiction to consider the Adversary Proceeding and the claims asserted by
24 Mr. Levandowski against Uber herein pursuant to 28 U.S.C. §§ 157 and 1334; the *Order*
25 *Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24 (N.D.
26 Cal.); and Rule 5011-1(a) of the Bankruptcy Local Rules for the United States District Court for
27 the Northern District of California. The parties also stipulated to have this dispute, and any
28

1 others raised in Mr. Levandowski's arbitration demand and Uber's proof of claim be resolved in
2 this Adversary Proceeding. *See* ECF No. 13.

3 24. This is a core proceeding under 28 U.S.C. § 157(b) including, without limitation,
4 under subsections (b)(2)(A), (B), (C), (K), and (O). Mr. Levandowski consents to the entry of a
5 final order by the Court in connection with this Adversary Proceeding.

6 25. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.
7

8 **FACTS**

9 **A. MR. LEVANDOWSKI ESTABLISHES HIS REPUTATION AS A PIONEER IN SELF- 10 DRIVING CAR TECHNOLOGY**

11 26. Mr. Levandowski has had a lifelong fascination with robots and autonomous
12 devices.

13 27. He earned his undergraduate and graduate degrees in Industrial Engineering and
14 Operations Research at University of California, Berkeley ("U.C. Berkeley").

15 28. In 2004, Mr. Levandowski participated in the Defense Advanced Research
16 Projects Agency's ("DARPA") Grand Challenge, a prize competition for autonomous vehicles.
17 He was 24 years old at the time.

18 29. The DARPA Grand Challenge was an effort to race robotic, computer-controlled
19 vehicles between Los Angeles and Las Vegas. Mr. Levandowski and a team of engineers from
20 U.C. Berkeley—working in Mr. Levandowski's garage using crowd-sourced donations—
21 submitted a self-driving, self-balancing, two-wheeled motorcycle. This motorcycle, Ghost rider,
22 competed against well-funded submissions from Stanford University, Carnegie Mellon, and
23 established companies. After performing well in several qualifying rounds, Ghost rider was
24 selected as a contender for the DARPA Grand Challenge.

25 30. Ghost rider now sits in the Smithsonian Museum as one of America's great
26 innovations.
27
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1 31. Mr. Levandowski's Ghost rider entry caught the attention of many, including Dr.
2 Sebastian Thrun, a former Stanford computer science professor who was also a participant in the
3 DARPA Grand Challenge.

4 32. Dr. Thrun recruited Mr. Levandowski to work for his mapping company, VuTool.
5 VuTool was subsequently acquired by Google.

6 **B. MR. LEVANDOWSKI BUILDS GOOGLE'S SELF DRIVING CAR PROGRAM**

7 33. Mr. Levandowski joined Google in 2007 as part of a team hired to work on
8 mapping with Dr. Thrun. Mr. Levandowski helped develop the technology for the Google
9 service now known as Street View.

10 34. In approximately 2009, Dr. Thrun and Mr. Levandowski decided to launch a self-
11 driving car program at Google. The program was named "Project Chauffeur."

12 35. Project Chauffeur catapulted Google into the lead in autonomous driving when, in
13 2010, cars using Google's self-driving technology were able to drive ten uninterrupted routes of
14 100 miles. By 2012, Google had logged over 300,000 miles of autonomous driving. Mr.
15 Levandowski was a key contributor in helping Google achieve these milestones. For his past
16 contributions and to incentivize him going forward, Google invited Mr. Levandowski to
17 participate in the Chauffeur Bonus Plan—an incentive plan that would pay members a
18 percentage of the valuation of Project Chauffeur starting at the end of 2015—and gave him the
19 highest initial allocation or individual earnout percentage of any member of the plan.

20 36. Mr. Levandowski was an instrumental contributor to Project Chauffeur until he
21 left Google in early 2016.

22 37. Mr. Levandowski would ultimately be paid over \$127 million by Google for his
23 work on Project Chauffeur. The majority of that payment came in December 2015 and then in
24 mid-August 2016, after Mr. Levandowski left Google.

25 **C. MR. LEVANDOWSKI CONSIDERS LEAVING GOOGLE**

26 38. For years, Google enjoyed its position as the leader in the self-driving space with
27 no significant challengers. In 2015, Uber announced the launch of its own self-driving car
28 initiative after acquiring a team of engineers from Carnegie Mellon University.

1 39. After Uber's announcement, there were many discussions within Google about
2 how to compete with Uber. In those discussions, executives within Google expressed distaste
3 and animosity towards Uber. Larry Page, one of Google's founders and its then-CEO, was one
4 of the individuals expressing such views.

5 40. Uber's founder and then-CEO, Travis Kalanick, testified that after Uber
6 announced its entry into self-driving, Mr. Page communicated directly to Mr. Kalanick his
7 displeasure about the increased competition:

8 So when we acquired the [Carnegie] team and we were eventually -- we acquired it
9 because we couldn't get meetings [with Google] and we couldn't figure out if they
10 were still up for partnering. When we finally got the meeting, Larry made it very
11 clear that he was very upset with us and not happy that we were doing autonomy.
12 And everything we would get in terms of a signal from other people who knew him
13 or knew people around him was that generally Google was super not happy,
unpumped, about us doing this. And so when you go and hire a group of people, a
large group of people, acquire a company where a large group of people, you know,
come from there, you know, that competitive thing, those competitive juices get
flowing, and that means there is a higher likelihood of a lawsuit of some kind.

14 **Exhibit B** is an excerpt from Mr. Kalanick's trial testimony in *Waymo LLC v. Uber*
15 *Technologies, Inc.* (Kalanick Waymo 2/7/2018 trial testimony) at 717:4-17.

16 41. Over time, Mr. Levandowski became increasingly dissatisfied with the direction of
17 Project Chauffeur and the slow progress it was making after its initial successes. In 2015, Mr.
18 Levandowski began to think about other self-driving opportunities.

19 42. After learning about Mr. Levandowski's discontentment at Google, Dr. Thrun
20 introduced Mr. Levandowski to Mr. Kalanick at Uber. Upon meeting Mr. Levandowski, Uber
21 repeatedly tried to recruit Mr. Levandowski and also encouraged him to leave Google to form a
22 commercial partnership where he could supply self-driving technology to Uber as an outside
23 technology vendor.

24 43. Mr. Levandowski's Google colleagues, and more than one of his superiors, were
25 aware that Mr. Levandowski was having discussions with Uber as he considered his future.

26 44. Simultaneously, in 2015, Lior Ron rejoined Google in a business role. Mr.
27 Levandowski and Mr. Ron, who had met while working on Google Maps, began to discuss the
28 problems with Project Chauffeur and ways in which the Project could be improved.

1 45. During those conversations, they also discussed new product markets, including
2 self-driving trucks. As they explored this concept and brainstormed further, both became
3 passionate about self-driving trucking. They were convinced that the trucking business could be
4 disrupted by the addition of self-driving technology and that self-driving trucking technology
5 could go to market much more quickly than passenger car technology. Mr. Levandowski began
6 to include Mr. Ron in his discussions with Uber and others. Mr. Levandowski and Mr. Ron
7 considered establishing a commercial vendor relationship with Uber to obtain funding for the
8 trucking business.

9 46. Toward the end of his time at Google, Mr. Levandowski also had several
10 discussions with Mr. Page about his dissatisfaction with Project Chauffeur. During one of these
11 discussions, Mr. Levandowski told Mr. Page that he wanted to create his own self-driving start-
12 up outside of Google.

13 47. Mr. Page responded that if Mr. Levandowski did anything competitive with
14 Google, he would face negative consequences. Because Google had bought several of Mr.
15 Levandowski's outside businesses previously and because others had left Google to start new
16 companies without objection from Google, Mr. Levandowski understood Mr. Page's threat to be
17 about a large, well-funded competitor and not a startup.

18 **D. MR. LEVANDOWSKI JOINS UBER AND OBTAINS INDEMNITY AGAINST CLAIMS**
19 **GOOGLE MAY RAISE**

20 48. Mr. Levandowski left Google on January 27, 2016. He joined Otto, a self-driving
21 trucking company and was credited as a co-founder.

22 49. Soon after Mr. Levandowski joined Otto, Uber pushed for discussions to acquire
23 Otto.

24 50. As part of these discussions, Mr. Levandowski repeatedly told Uber that Google
25 would see Mr. Levandowski working with Uber on consumer self-driving technology (instead of
26 trucking) as a competitive act that would convert him from a friendly, start-up competitor to an
27 enemy. Mr. Levandowski also told Uber that he feared that Google would sue him and seek
28

1 recovery of the substantial amounts of money that had been paid to him or were owed to him, in
2 particular, the proceeds from the Chauffeur incentive plan that Google owed him.

3 51. In total, he had over a dozen conversations with executives at Uber about his
4 concerns, including multiple conversations with Mr. Kalanick. In particular, Mr. Levandowski
5 discussed the possibility that Google might sue him, Mr. Page's aggressiveness with competitors,
6 and Mr. Page's dislike of Mr. Kalanick. In response, Mr. Kalanick stated that Uber was prepared
7 to protect Mr. Levandowski from an aggressive assault by Google.

8 52. As a key and indivisible part of the transaction to sell Otto to Uber and have Mr.
9 Levandowski join Uber, Uber agreed to indemnify Mr. Levandowski against any claims Google
10 might assert against him. *See* Ex. A. The goal of the Indemnification Agreement was to
11 indemnify Mr. Levandowski and others for "Pre-Signing Bad Acts," which were defined as any
12 of the following acts that occurred prior to April 11, 2016:

13 "Bad Acts" shall mean (a) fraud committed by or on behalf of any member of the
14 Company Group and/or committed by any Employee, (b) willful, intentional or
15 deliberate conduct by an Employee or any member of the Company Group that
16 constitutes or directly leads or contributes to the infringement (direct or indirect) or
17 misappropriation by an Employee or any member of the Company Group of any
18 patents, copyrights, trademarks or trade secrets of such Employee's Former
19 Employer, including, without limitation, taking, removing and/or copying software,
20 product plans, or invention disclosures, in electronic or tangible form that are owned
21 by such Employee's Former Employer, (c) willful and/or intentional breach by any
22 member of the Company Group or any Employee of any fiduciary duty or duty of
23 loyalty to such Former Employer and/or (d) willful and/or intentional breach by any
24 member of the Company Group or any Employee of any lawful and enforceable
25 non-solicitation, non-competition, confidentiality or other similar restrictive
26 covenant or agreement between any Employee and such Employee's Former
27 Employer.

28 "Pre-Signing Bad Acts" means any Bad Act committed prior to the Agreement Date.

29 *Id.* at 1-2, 3 (definition of "Bad Acts" and "Pre-Signing Bad Acts").

30 53. Section 2.1 outlined the scope of the indemnity for these Pre-Signing Bad
31 Acts:

32 (a) ***Purchaser will indemnify and hold harmless each Diligenced Employee*** and
33 the Company Group, ***to the maximum extent permitted by applicable Law*** (subject
34 to the limitations and exclusions set forth herein), from and against any and ***all***
35 ***Expenses incurred by such Diligenced Employee*** or any member of the Company
36 Group, as applicable, arising out of any claim brought or threatened in writing by
37 any Former Employer of such Diligenced Employee against any member of the

1 Company Group or such Diligenced Employee, as applicable, arising out of or
2 alleged to arise out of: (i) the infringement (direct or indirect) or misappropriation
3 by such Diligenced Employee or any member of the Company Group of any
4 intellectual property, including any patents, copyrights, trademarks or trade secrets,
5 of such Diligenced Employee's Former Employer, (ii) breach by such Diligenced
6 Employee of such Diligenced Employee's fiduciary duty or duty of loyalty to such
7 Diligenced Employee's Former Employer, and/or (iii) breach by such Diligenced
8 Employee of any non-solicitation, non-competition, confidentiality or other similar
9 restrictive covenant or agreement between such Diligenced Employee and such
10 Diligenced Employee's Former Employer (each, subject to Section 2.1(b) below, an
11 "Indemnified Claim", and, collectively, the "Indemnified Claims")

12 *Id.* at § 2.1(a) (emphasis added).

13 54. "Expenses" is defined in the Indemnification Agreement to include, among other
14 costs, reasonable attorneys' fees, costs of defense, any judgments, awards or damages, and
15 interest incurred:

16 "Expenses" means (a) any expense, liability, or loss, including reasonable attorneys'
17 fees, mediation fees, arbitration fees, expert witness fees, vendor fees, costs (such
18 as witness fees, duplication charges, data storage fees, filing fees, travel and meals),
19 (b) any judgments, fines, bonds, penalties, damages, awards, and amounts paid or to
20 be paid in settlement, and (c) any interest, assessments, taxes or other charges
21 imposed on any of the items in part (a) and (b) of this definition, in each case, that
22 is out-of-pocket and documented; provided, that Expenses shall exclude special,
23 consequential, indirect, exemplary or punitive damages, unless such Expenses were
24 specifically awarded in a Final Judgment.

25 *Id.* at 3.

26 55. The only limitations on Uber's indemnification obligations with respect to "Pre-
27 Signing Bad Acts" are found in Section 2.1(b)(ii). That section reads:

28 (b) Notwithstanding anything herein to the contrary, ***an Indemnified Claim shall not, regardless of whether the Closing occurs, include***, and none of Parent,
Purchaser or any of their respective Affiliates shall have any obligation hereunder
to indemnify the Company Group or any Diligenced Employee in respect of, any:

(ii) ***claims that have been determined by a Final Judgment to arise or result from any Pre-Signing Bad Acts*** committed by or on behalf of any member of the Company Group by a Diligenced Employee and/or committed by any Diligenced Employee that reasonably arise or result from any facts, circumstances, activities or events arising prior to the date hereof that ***either (A) were not truthfully disclosed by the Diligenced Employees to the Outside Expert in response to relevant inquiries*** in connection with the due diligence performed by the Outside Expert ***or (B) were not contained or reflected in the due diligence materials provided by the Diligenced Employees*** to the Outside Expert.

29 *Id.* at § 2.1(b)(ii) (emphasis added).

1 56. The Indemnification Agreement was structured to ensure that Mr. Levandowski
2 would not be left unprotected against Google, which had inexhaustible resources to attack Mr.
3 Levandowski. Mr. Levandowski would not have entered into the transaction to sell Otto to Uber
4 without Uber's indemnity promise.

5 57. The Indemnification Agreement was structured so that Uber would indemnify
6 Mr. Levandowski first and could only seek recovery from him for Expenses improperly paid (if
7 any) after any matters initiated by Google had concluded. Under Section 2.3 of the
8 Indemnification Agreement, the parties specified a procedure by which Mr. Levandowski would
9 notify Uber about Expenses and receive payment.

10 **2.3. Expenses**

11 (a) Upon receipt of a written request for the advancement of Expenses incurred by
12 an Indemnified Person arising out of any Indemnified Claim and reasonable
13 documentation evidencing such Expenses, Purchaser shall pay, or cause to be paid,
14 to such Indemnified Person the amount of such Expenses within [redacted] of such
15 request.

16 *Id.* at § 2.3.

17 58. If Uber denied a request for advancement of Expenses or otherwise failed to pay
18 an Expense, Uber agreed that Mr. Levandowski could initiate arbitration proceedings to enforce
19 Uber's obligations or seek specific performance of Uber's obligations. Ex. A at §§ 2.3, 3.11

20 59. The parties also agreed that Mr. Levandowski could pursue specific performance
21 in the event Uber refused to advance Expenses, including proceedings in San Francisco state or
22 federal courts where both parties submitted to jurisdiction.

23 **3.11 Specific Performance.** Except as set forth in this Agreement, the rights and
24 remedies of the Parties specified shall be cumulative (and not alternative). Each of
25 the Parties agrees that ***this Agreement is intended to be legally binding and***
26 ***specifically enforceable*** pursuant to its terms and that Purchaser and the
27 ***Indemnified Persons would be irreparably harmed if any of the provisions of this***
28 ***Agreement are not performed in accordance with their specific terms*** and that
monetary damages would not provide adequate remedy in such event. Accordingly,
in addition to any other remedy to which a nonbreaching Party may be entitled at
law, ***a non-breaching Party shall be entitled to seek injunctive relief to prevent***
breaches of this Agreement and to specifically enforce the terms and provisions
hereof.

29 *Id.* at § 3.11 (emphasis added); *see also id.* at § 3.5.

1 **E. UBER ACQUIRES OTTO**

2 60. As part of the indemnification process, Mr. Levandowski agreed to be interviewed
3 by Uber's due diligence and risk management firm, Stroz Friedberg, LLC ("Stroz"). He also
4 provided over 35 of his devices and gave access to over ten email and other types of accounts to
5 Stroz for examination. To this day, Uber, through Stroz, continues to be in possession of Mr.
6 Levandowski's devices (other than his cell phone at the time) and images of his accounts.

7 61. The Stroz /Uber investigation of Mr. Levandowski uncovered a great number of
8 facts related to potential claims that might be brought by Google but was, by Stroz's own
9 admission, incomplete. In early April 2016, while Stroz' was conducting its investigation, Uber
10 executed the Indemnification Agreement.

11 62. As Stroz summarized, Uber requested preliminary information regarding the
12 investigation "in the lead-up to Uber's signing of an agreement to purchase Otto and "long
13 before the investigation was completed." Stroz had provided Uber with preliminary information
14 that included Stroz's draft memo from Mr. Levandowski's interviews and access reports
15 showing that Mr. Levandowski retained thousands of Google files, and had accessed hundreds
16 of Google documents after he left Google, including several that were identified by Mr.
17 Levandowski as relating to self-driving. The interview memo remained in draft form and Mr.
18 Levandowski's counsel reserved his rights as to the accuracy of the information in the memo.

19 63. The Stroz draft interview memo contained nine pages of summaries of Mr.
20 Levandowski's interactions and discussions with Google employees about his plans to start a
21 company outside of Google, including summaries of one-on-one discussions and larger
22 gatherings at his house.

23 64. Uber pushed for the entire transaction to proceed to closing knowing that Stroz had
24 not completed its investigation.

25 65. On April 11, 2016, Uber executed several documents to complete this transaction,
26 including the Indemnification Agreement, the Otto Agreement and Plan of Merger (the "Otto
27 Agreement"), and the Otto Trucking LLC Agreement and Plan of Merger (the "Otto Trucking
28

Agreement”), which gave Uber an option to acquire a second company created by Mr. Levandowski and Mr. Ron.

66. Stroz did not issue a report until August 5, 2016, almost four months after it signed the Otto acquisition documents.

67. The Stroz report disclosed numerous facts, including the following:

During his interview, Levandowski informed Stroz Friedberg that he: (a) possessed Google information; (b) met with a number of Google employees about joining his start-up company; (c) met with Uber executives, while employed at Google, about forming a new company; and (d) destroyed highly confidential Google proprietary information he had stored on five disks on his personal Drobo 5D, including source code, files, and software pertaining to self-driving cars.

68. Stroz reported that Mr. Levandowski’s devices demonstrated that during his time at Google, he downloaded documents and files relating to Project Chauffeur.

Stroz Friedberg’s analysis also identified relevant files that were accessed on Levandowski’s personal laptop and subsequently deleted between September 1, 2015 and March 22, 2016. An example of this activity includes system logs indicating that on December 14, 2015, approximately 24,000 files were located within the folder path “/Users/Anthony/Desktop/boards/chauffeur-svn/.” These same system logs indicate that on December 14, 2015, approximately 24,000 files were located within the folder path “/users/Anthony/.Trash/boards/chauffeur-svn/.” A review of the names of the deleted files indicates that they were source code and electronic design files relating to driverless cars.

69. It also reported that Mr. Levandowski downloaded Chauffeur files shortly before his departure from Google and had accessed them following his departure from Google.

Stroz Friedberg also identified access by Levandowski to several cloud storage repositories. A review of the internet history shows access to Google Docs on January 26 2016, the day of Levandowski’s resignation. In particular, he accessed a file named “Chauffeur TL weekly updates - 04 2015 – Google Sheets.” Further review of the laptop identified a file with the same name in Levandowski’s Downloads folder, which is attached as Exhibit 27. The file was created on January 1, 2016 and last accessed on February 24, 2016 (about a month after his departure from Google).

70. Stroz reported facts regarding hiring of Google employees.

While employed at Google, Levandowski had a number of one-on-one meetings and four group meetings with several Google/Chauffeur employees about joining his start-up company. The one-on-one meetings occurred at work with over 20 Google/Chauffeur employees (during individual update meetings or around the Google campus), coffee shops, restaurants, homes, or telephonically. There were also four group meetings, two of which occurred with small groups of Google and/or Chauffeur employees at a barbeque at Levandowski’s house and on a ski trip to Lake Tahoe. Two larger group meetings took place at Levandowski’s house in

1 approximately December 2015 and January 2016. These meetings included
2 approximately 15 to 20 Google and non-Google employees. . . .

3 Offers of employment were made to at least 15 Chauffeur team employees by
4 Levandowski and/or his Ottomotto team before and after his departure from
5 Google. According to Levandowski, as of the dates of his interview on March 22
6 and March 23, 2016, Ottomotto had approximately 30 employees, 16 of whom were
7 former Google employees.

8 71. Stroz included as an exhibit to its report the draft memorandum of its interview
9 with Mr. Levandowski, which included a list of some of his side projects for which he had an
10 ownership interest, but did not include any discussion of this memo in its main report. In
11 addition, Mr. Levandowski's devices and accounts also contained extensive information about a
12 company named Odin Wave/Tyto, Mr. Levandowski's estate planning, and various investments.

13 72. Stroz noted discrepancies in what Mr. Levandowski recalled and what Stroz
14 discovered on Mr. Levandowski's devices.

15 Our forensic examination of Levandowski's devices and accounts corroborates his
16 assertion that he stored and accessed Google files on his personal laptop in folders
17 labeled "Chauffeur" and "Google." However, contrary to his belief that there were
18 no or few Google e-mails on his laptop, Stroz discovered approximately 50,000
19 Google work e-mail messages that were downloaded onto Levandowski's computer
20 on September 20, 2014. Ten of those e-mails were last accessed between September
21 1, 2015 and January 28, 2016. It is difficult to believe that Levandowski was not,
22 prior to his interview, fully aware of the extent of the data that he had retained.

23 73. Stroz also called to Uber's attention Mr. Levandowski's deletion of files and text
24 messages, as well as its decision not to investigate these deletions further.

25 Many of these deletions may have been good faith attempts by Levandowski to
26 purge retained Google material from his devices in accordance with his obligation
27 not to retain confidential Google data. However, by March 2016, Levandowski was
28 aware that Stroz Friedberg was going to implement a process to preserve, identify,
and potentially remediate retained Google material from his devices. At that point,
the better course would have been to let that process control. In addition, there was
an effort by Levandowski and his Ottomotto colleagues to delete texts in real time.
Stroz Friedberg did not re-interview Levandowski or others regarding their reason
for this practice.

74. Despite and with full knowledge of Stroz's findings, on August 18, 2016, Uber
closed the acquisition of Otto and publicly announced that it was acquiring the company and
working with Mr. Levandowski.

1 75. In that press release, Uber touted Mr. Levandowski's skills and experience, calling
2 him "one of the world's leading autonomous engineers" and a "prolific entrepreneur with a real
3 sense of urgency." Uber further stated that it now had "one of the strongest autonomous
4 engineering groups in the world [and] self-driving trucks and cars that are already on the road
5 thanks to Otto and Uber's Advanced Technologies Center in Pittsburgh." **Exhibit C** is a true
6 and correct copy of Uber's August 18, 2016 press release found at [https://www.uber.com/en-](https://www.uber.com/en-FR/newsroom/rethinking-transportation-2/)
7 [FR/newsroom/rethinking-transportation-2/](https://www.uber.com/en-FR/newsroom/rethinking-transportation-2/).

8 **F. GOOGLE INITIATES ARBITRATION AGAINST MR. LEVANDOWSKI**

9 76. On October 28, 2016, nine months after Mr. Levandowski resigned from Google
10 and only two months after Uber announced its acquisition of Otto, Google filed and served two
11 arbitration demands on Mr. Levandowski alleging breach of fiduciary duty, breach of his
12 employment agreements relating to misuse of confidential information, violation of his
13 nonsolicitation obligations, and breach of other noncompetition and nonsolicitation obligations.
14 **Exhibit D** contains true and correct copies of Google's arbitration demands without exhibits.

15 77. Although alleging breach of different agreements and/or duties, both arbitration
16 demands focused on the same set of underlying, and as the later arbitration panel determined,
17 "interrelated" facts.

18 78. The two arbitration demands involved facts concerning Mr. Levandowski's
19 dealings with an entity named "Odin Wave" (later renamed "Tyto LiDAR" or "Tyto") and the
20 formation of Otto, which later acquired Tyto before Otto was acquired by Uber.

21 79. Google alleged that Mr. Levandowski violated his duties to Google through his
22 relationship with Tyto. Google also alleged that Mr. Levandowski breached his obligations to
23 Google by forming Otto, soliciting Google employees to join Otto and eventually Uber, and
24 using confidential information regarding compensation to recruit Google employees.

25 80. The claims asserted by Google were the precise types of claims covered by the
26 Indemnification Agreement.

1 **G. UBER ACCEPTS THE INDEMNITY OBLIGATIONS**

2 81. On November 3, 2016, Mr. Levandowski promptly provided notice to Uber of
3 these Former Employer Claims pursuant to the requirements of the Indemnification Agreement.

4 82. On November 3, 2016, Uber's in-house counsel and as its outside counsel from
5 Morrison & Foerster LLP ("MoFo"), Eric Tate, interviewed Mr. Levandowski about the
6 allegations asserted in Google's arbitration demands.

7 83. After receipt of the notice and interviewing Mr. Levandowski, Uber accepted Mr.
8 Levandowski's tender of the indemnity (even though Uber's outside counsel stated that he was
9 concerned that not everything alleged in the arbitration demands was covered in the Stroz due
10 diligence) and assumed control of Mr. Levandowski's defense.

11 84. Uber hired MoFo to initially represent Mr. Levandowski. Through its counsel,
12 Uber controlled the strategy for Mr. Levandowski's defense, including deciding to consolidate
13 the two arbitrations, initiating counterclaims, filing Mr. Levandowski's answer, alleging
14 affirmative defenses, and dealing with procedural matters relating to the arbitration.

15 85. In February 2017, Waymo LLC ("Waymo")—the entity Project Chauffeur became
16 after a corporate restructuring—initiated an action in the Northern District of California for
17 misappropriation of trade secrets and patent infringement against Uber (the "Waymo Action").
18 That action alleged, among other things, that Mr. Levandowski had downloaded 14,000 files
19 from a Google server, that those files contained trade secrets, and that he had used those files at
20 Otto, which was acquired by Uber in 2016. These were the same files that Stroz had noted in its
21 report, except that because Mr. Levandowski had downloaded the repository multiple times over
22 his time at Google, Stroz had identified 24,000 files from that server.

23 86. Based on Waymo's allegations, MoFo notified Google that Mr. Levandowski was
24 invoking his Fifth Amendment rights and would not make disclosures in the arbitration.

25 87. Several weeks after, MoFo determined it had a potential conflict of interest in
26 jointly representing Uber and Mr. Levandowski. As a result, MoFo sought to withdraw from
27 representation of Mr. Levandowski and continue with its representation of Uber.

1 88. Uber hired Goodwin Procter to separately represent Mr. Levandowski in the
2 arbitration, but continued to control his defense.

3 89. For the next year, Uber continued to pay for Mr. Levandowski's legal defense as
4 required by the Indemnification Agreement. Uber also continued to direct and control Mr.
5 Levandowski's defense, requiring updates on the proceedings, approval over experts, discussion
6 about who would be arguing motions, pre-approval of submissions to the arbitration panel, and
7 insisting on handling all settlement discussions. Mr. Levandowski complied with Uber's
8 requirements and cooperated with his defense. Mr. Levandowski and his counsel met with Uber
9 whenever it requested.

10 90. Mr. Levandowski provided information and guidance that led to the discovery of
11 evidence that was helpful to his defense in the arbitration as well as the Waymo action. This
12 included guidance that led to the discovery of statements by the administrator of the server that
13 housed the 14,000 files at issue that the files were "low value" and that "checking out" or
14 downloading the entire repository of 14,000 files did not "ring the alarm bells" for him. This
15 was because when a user accessed the server where the so-called 14,000 files were located, the
16 system automatically downloaded the entire repository onto his or her laptop even if the user
17 only wanted to access one or two files. Ultimately, this discovery, driven by Mr. Levandowski's
18 contributions, became a centerpiece of Uber's defense in the Waymo case.

19 91. In addition to providing this critical information, Mr. Levandowski also provided
20 additional information to support Uber's defense. This included obtaining from a former
21 Chauffeur team member the earrings she received as a parting gift that contained the alleged
22 trade secrets at issue in the Waymo Action. Mr. Levandowski also identified numerous events
23 and witnesses who aided Uber in its defense of the Waymo action as well as the arbitration with
24 Google.

25 92. Mr. Levandowski also complied with Uber's requirement that Uber control all
26 settlement discussions with Google. Mr. Levandowski made several proposals regarding
27 possible settlement structures to Uber hoping that a global settlement could be reached with
28

1 Google. But because Uber controlled settlement prospects with Google, Mr. Levandowski did
2 not know whether any of his settlement proposals were made to Google.

3 **H. UBER SETTLES THE WAYMO ACTION**

4 93. In February 2018, while controlling Mr. Levandowski's defense, Uber settled the
5 Waymo Action with Waymo/Google. The existence of a settlement between Uber and Waymo
6 was publicly announced, but limited information regarding the exact terms of the settlement is
7 publicly available.

8 94. Upon information and belief, that settlement agreement contained broad releases
9 by both parties releasing claims as to the other's past and present employees.

10 95. Upon information and belief, Uber agreed to a broad release as to Mr.
11 Levandowski, a past employee of Google.

12 96. In addition, upon information and belief based on publicly available information,
13 in the Waymo Settlement, Uber agreed to never hire or do business with Mr. Levandowski ever
14 again.

15 97. Upon information and belief, because of the Waymo settlement terms, Uber
16 refused to close on its acquisition of Otto Trucking or support Mr. Levandowski's trucking
17 business.

18 98. Upon information and belief, Uber traded Mr. Levandowski's rights in Otto
19 Trucking and his ability to practice his profession in exchange for a settlement with Waymo.

20 **I. UBER REQUESTS THAT MR. LEVANDOWSKI TESTIFY SHORTLY BEFORE THE**
21 **ARBITRATION HEARING**

22 99. On April 2, 2018, days before the final arbitration hearing and nearly a year and a
23 half after it accepted its obligation to indemnify Mr. Levandowski, Uber for the first time
24 informed Mr. Levandowski that it intended to seek reimbursement for the Expenses it advanced
25 for Mr. Levandowski to defend himself in the arbitration. **Exhibit E** is a true and correct copy of
26 Uber's April 2, 2018 letter.
27
28

1 100. One basis for Uber’s claim for reimbursement was that Mr. Levandowski “refused
2 to testify at his deposition through an unjustifiably broad invocation of the Fifth Amendment”—
3 which Mr. Levandowski had exercised over a year before with full knowledge of Uber.

4 101. Nevertheless, in its April 2, 2018 letter, Uber claimed that Mr. Levandowski’s
5 refusal to testify in the arbitration proceedings (after the *Waymo* court had issued an order of
6 referral to the United States’ attorney) was now a breach of the Indemnification Agreement.

7 102. Uber then demanded that Mr. Levandowski waive his Fifth Amendment rights and
8 testifying during the arbitration.

9 103. In response to Uber’s request, Mr. Levandowski immediately alerted Google and
10 the arbitration panel that he was willing to testify and offered to make himself available for
11 deposition before the arbitration hearing.

12 104. Mr. Levandowski also provided the arbitration panel and Uber with a proffer of
13 the topics on which he was willing to testify.

14 105. Mr. Levandowski’s offer to testify was denied by the arbitration panel, and Uber
15 continued to pay Mr. Levandowski’s legal fees and retain control over Mr. Levandowski’s
16 defense through the arbitration hearing and post-hearing briefing.

17 106. In addition, for the first time, Uber also stated that it believed that Google’s claims
18 relating to an entity called “Tyto” are Excluded Claims for which Uber may seek reimbursement
19 after the arbitration was concluded because, according to Uber, Mr. Levandowski “provided no
20 information to Stroz Friedberg regarding his connection to [Tyto].”

21 107. Uber’s claims were false. Uber accepted Mr. Levandowski’s tender of indemnity
22 **only after** Google’s commencement of the arbitration proceeding alleging claims relating to Tyto
23 and **only after** Mr. Levandowski had been interviewed by Uber extensively about Google’s
24 allegations relating to Tyto. In addition, Mr. Levandowski’s devices given to Stroz had extensive
25 information about Tyto on them. And Stroz had specifically identified other materials on Mr.
26 Levandowski’s devices that he had not disclosed during interviews.

27 108. In fact, Uber had considered acquiring Tyto in 2015 but declined to do so at that
28 time. Tyto was ultimately acquired by Otto with Uber’s consent and at Uber’s request prior to

1 Uber closing on its acquisition of Otto to secure a lower price for Tyto than what Tyto would
2 have requested had it known that Uber was the acquirer.

3 109. Moreover, prior to April 2018, Uber received extensive documents and
4 information about Tyto in the Waymo Action and had actively participated in preparing former
5 Tyto employees (then Uber employees) for depositions, through which Uber acquired knowledge
6 that Mr. Levandowski had helped Tyto get started. Indeed, Tyto's founder, Brent Schwarz, its
7 technological lead, James Haslim, and the manager of the entity that invested in Tyto, Ognen
8 Stojanovski, all worked for Uber and were deposed about Tyto. Uber had counsel present at the
9 meetings with these witnesses and during most, if not all, of their testimony. These individuals
10 were also central witnesses in the two arbitrations with Google with respect to the Tyto-related
11 allegations.

12 110. Specifically, Uber was aware that Mr. Levandowski had facilitated the relationship
13 between Tyto's founder and its investor, a holding company managed by Mr. Stojanovski that
14 invested funds provided by two irrevocable trusts formed for the benefit of Mr. Levandowski's
15 children, and would visit Tyto and his friends at that company to talk about technical and
16 business matters from time to time. Uber was also aware of Pierre Droz's (a Google employee)
17 allegations that Mr. Levandowski was involved with Tyto and even deposed him extensively on
18 that very topic during the Waymo litigation.

19 111. Armed with this knowledge, Uber paid for and controlled Mr. Levandowski's
20 defense of the arbitration. In fact, Uber did not raise any issues regarding coverage until April
21 2018.

22 **J. UBER REFUSES TO PAY EXPENSES RELATING TO GOOGLE'S CLAIMS**

23 112. On March 28, 2019, the arbitration panel issued an interim award in favor of
24 Google. The arbitration panel found violation of the exact claims covered by the
25 Indemnification Agreement and found that Mr. Levandowski needed to pay back every cent of
26 the compensation paid by Google.

1 113. On May 13, 2019, Mr. Levandowski requested confirmation from Uber that it was
2 going to abide by its indemnity obligations and pay for any adverse award in light of the interim
3 award. **Exhibit F** is a redacted copy of Mr. Levandowski's May 13, 2019 letter.

4 114. In addition, Mr. Levandowski responded to Uber's claim that Mr. Levandowski
5 did not disclose information relating to Tyto to Stroz during the due diligence. Mr. Levandowski
6 identified numerous documents that the arbitration panel relied on relating to Tyto that were on
7 the devices he provided to Stroz as well and pointed out that documents from his devices were
8 shown to witnesses at the arbitration hearing.

9 115. Mr. Levandowski sent Uber a follow up letter on June 27, 2019. **Exhibit G** is a
10 true and correct copy of that follow-up letter.

11 116. On July 3, 2019, Uber responded to Mr. Levandowski's May and June 2019 letters
12 stating that Mr. Levandowski had breached the Indemnification Agreement, that a majority of
13 the interim award was "attributable to an Excluded Claim," and that "Uber has no contractual
14 obligation to advance any funder to Mr. Levandowski or to Google on Mr. Levandowski's
15 behalf." **Exhibit H** is a true and correct copy of Uber's July 3, 2019 letter.

16 117. On August 15, 2019, Mr. Levandowski was indicted for thirty-three counts of
17 trade secret misappropriation. The alleged trade secrets at issue in the indictment were some of
18 the same ones that were at issue in the Waymo Action. Mr. Levandowski ultimately agreed to
19 plead guilty to one count of trade secret misappropriation based on his access of one Google
20 document containing trade secret information on one occasion after he left Google and has
21 accepted restitutionary obligations in the amount of \$756,499.22. This one file was the same file
22 that Stroz expressly identified in its report to Uber, and in fact, the Stroz report was the basis for
23 the indictment and the plea. The government agreed to dismiss the remaining thirty-two counts
24 against Mr. Levandowski.

25 118. On August 30, 2019, counsel for Uber claimed that Mr. Levandowski had
26 fraudulently induced Uber into entering into the Indemnification Agreement, the remedy for
27 which was rescission of the agreement. **Exhibit I** is a true and correct copy of Uber's August 30,
28 2019 letter.

1 119. At this point in time, Uber did not clearly state that the Indemnification Agreement
2 was rescinded (and instead said it had a remedy of rescission should it choose to exercise it),
3 make any offer to restore the consideration it received under the agreement, or cede control of
4 Mr. Levandowski's defense.

5 120. Uber continued to advance payment for expenses incurred through September 25,
6 2019.

7 121. On September 27, 2019, Uber exercised its control over Mr. Levandowski to
8 terminate its engagement of Goodwin Procter as counsel for Mr. Levandowski. Following this
9 termination, Mr. Levandowski separately engaged Goodwin Procter to represent him.

10 122. In addition, on November 5, 2019, Uber filed a Form 10-Q with the Securities and
11 Exchange Commission. In that filing, Uber again affirmed its indemnity obligations, stating,
12 "The panel's final award is expected by December 24, 2019. Pursuant to a contractual obligation,
13 Uber is indemnifying both employees with respect to certain claims. Whether Uber is ultimately
14 responsible for such indemnification, however, depends on the exceptions and conditions set
15 forth in the indemnification agreement." **Exhibit J** contains excerpts from Uber's November
16 2019 10-Q filing with the Securities Exchange Commission.

17 123. On December 6, 2019, the arbitration panel issued a final arbitration award. In
18 addition to the findings from the Interim Award, the Final Award awarded Google prejudgment
19 interest at the 10% rate pursuant to Cal. Civ. Code § 3287, and awarded attorneys' fees and costs
20 to Google under Cal. Civ. Code. § 1717.

21 124. The Final Award was not based on any alleged trade secret misappropriation by
22 Mr. Levandowski or others. During the arbitration proceedings, Google had repeatedly
23 represented that it was pursuing only claims premised on different conduct than what was at
24 issue in the Waymo litigation. The arbitration panel recognized this on several occasions.

25 125. On December 10, 2019, Mr. Levandowski informed Uber of the final award.
26 **Exhibit K** is a true and correct copy of Mr. Levandowski's December 10, 2019 letter. Because
27 of the lack of clarity in Uber's previous statements, Mr. Levandowski asked Uber, as the
28 Indemnitor in control of the defense of the case, how it would like to proceed. Specifically,

1 Mr. Levandowski inquired whether Uber intended to resolve the matter by paying the judgment
2 or whether it would continue to advance Expenses, including paying for Mr. Levandowski's
3 counsel through any appeal and posting a bond to stay the judgment pending appeal.

4 126. On December 31, 2019, Uber responded to Mr. Levandowski's December 10,
5 2019 letter and stated that it rescinded the Indemnification Agreement. **Exhibit L** is a true and
6 correct copy of Uber's December 31, 2019 letter. The stated basis for rescission of the
7 Indemnification Agreement was Mr. Levandowski's alleged failure to disclose his connection to
8 Tyto—the same basis that Uber previously stated for seeking reimbursement under the
9 Indemnification Agreement for Expenses paid relating to the claims based on Tyto.

10 127. Uber stated that it would not pay any portion of the final award or advance any
11 additional Expenses.

12 128. In addition, Uber ceded its right to direct and control the defense of Mr.
13 Levandowski's case, stating, "Nor will Uber . . . take any steps—including hiring separate
14 counsel—to direct and control Mr. Levandowski's petition to vacate the Final Award or any
15 subsequent appeals."

16 129. On February 5, 2020, Uber provided payment for Mr. Levandowski's Expenses
17 through September 25, 2019. Uber did not provide payment for any Expenses incurred after that
18 date.

19 130. On March 4, 2020, Judge Schulman in San Francisco Superior Court entered a
20 judgment in Google's favor against Mr. Levandowski in the amount of \$179,047,998.64.

21 **Exhibit M** is a true and correct copy of the judgment in Google's favor.

22 131. On March 4, 2020, following entry of the judgment in Google's favor, Mr.
23 Levandowski filed a chapter 11 petition in the United States Bankruptcy Court for the Northern
24 District of California commencing the Chapter 11 Case.

25 132. On March 6, 2020, Mr. Levandowski provided notice of the judgment to Uber and
26 requested advancement of payment for these Expenses under Section 2.3 of the Indemnification
27 Agreement. In addition, Mr. Levandowski requested an advance for attorneys' fees and costs in
28 the amount of \$475,571.32, which Mr. Levandowski had incurred between September 26, 2019

1 and February 29, 2020. **Exhibit N** is a copy of Mr. Levandowski's March 6, 2020 request
2 without exhibits.

3 133. On March 27, 2020, Uber responded to Mr. Levandowski's March 6, 2020 letter
4 and reaffirmed its position that it had rescinded the Indemnification Agreement and was not
5 going to pay Google's judgment or any other Expenses. **Exhibit O** is a copy of Uber's March
6 27, 2020 letter.

7 134. As a result, Mr. Levandowski filed an arbitration demand with JAMS San
8 Francisco.

9 135. Uber filed an answer on April 13, 2020 in which it alleged, among other defenses
10 that it had rescinded the Indemnification Agreement based on Mr. Levandowski's purported
11 fraud, and that if the Indemnification Agreement remains enforceable, a majority of Google's
12 judgment is allocable to Excluded Claims as defined in the Indemnification Agreement.

13 136. On July 6, 2020, Uber filed the Proof of Claim, through which it brought into the
14 Chapter 11 Case issues from the arbitration to support its purported position as a creditor of Mr.
15 Levandowski. **Exhibit P** is a true and correct copy of Uber's Proof of Claim, ECF No. 8-1.

16 137. On July 28, 2020, the parties agreed, and the Court approved, that Mr.
17 Levandowski could withdraw his arbitration demand and that all disputes in the arbitration
18 demand, the original complaint in this proceeding, and Uber's proof of claim would be resolved
19 as part of this Adversary Proceeding.

20 **COUNT I**

21 **(Declaratory Judgment - Waymo Settlement Release)**

22 138. Mr. Levandowski incorporates by reference the preceding paragraphs as if fully
23 stated herein.

24 139. On February 8, 2018, Waymo and Uber executed a settlement agreement to
25 resolve Waymo's dispute with Uber.

26 140. Upon information and belief, the Waymo Settlement contained broad releases in
27 which Google and Uber released known and unknown claims that have or could be asserted
28 against the other's past and former employees.

1 141. Upon information and belief, Mr. Levandowski is a beneficiary of the releases in
2 the Waymo Settlement as he is a former employee of Google.

3 142. Upon information and belief, Google excluded from its release the arbitration
4 claims against Mr. Levandowski and Uber did not exclude any claims against Mr. Levandowski
5 in its release.

6 143. Upon information and belief, all of the claims in the Proof of Claim and Uber's
7 Answer and Counterclaims, including Uber's claims for rescission, restitution of benefits
8 provided under the Indemnification Agreement, consequential damages arising from Mr.
9 Levandowski's alleged fraud, contribution from Mr. Levandowski for the Ron and Waymo
10 Settlements, Uber's assertion that the Tyto claims are "Excluded Claims" or that Uber is entitled
11 to a setoff based on Tyto, and any claim for attorneys' fees arising from litigation relating to the
12 foregoing dispute, were released by Uber in the Waymo Settlement.

13 144. As a result of the Proof of Claim and Mr. Levandowski's objection thereto, a live
14 controversy exists as to whether Uber released Mr. Levandowski in the Waymo Settlement and,
15 if so, what claims Uber released.

16 145. This issue is ripe for determination and requires a declaration as to Mr.
17 Levandowski's rights in the Waymo Settlement.

18 146. Mr. Levandowski seeks a declaration that the claims and defenses in the Proof of
19 Claim and Uber's Amended Answer and Counterclaims, including Uber's claims for rescission,
20 restitution of benefits provided under the Indemnification Agreement, consequential damages
21 arising from Mr. Levandowski's alleged fraud, contribution from Mr. Levandowski for the Ron
22 and Waymo Settlements, Uber's assertion that the Tyto claims are "Excluded Claims" or that
23 Uber is entitled to a setoff based on Tyto, and any claim for attorneys' fees arising from
24 litigation relating to the foregoing dispute, are barred by the Waymo Settlement.

25 **COUNT II**

26 **(Specific Performance to Pay Expenses)**

27 147. Mr. Levandowski incorporates by reference the preceding paragraphs as if fully
28 stated herein.

1 148. On April 11, 2016, Mr. Levandowski and Uber entered into the Indemnification
2 Agreement wherein Uber agreed to indemnify Mr. Levandowski for “any claim that has arisen
3 out of or resulted from any Pre-Signing Bad Acts . . . committed by [Mr. Levandowski]” arising
4 out of the facts or circumstances that were part of the Stroz investigation. Ex. A at 1-2.

5 149. Specifically, Uber agreed to “indemnify and hold harmless [Mr. Levandowski] . . .
6 to the maximum extent permitted by applicable law . . . from and against any and all Expenses
7 incurred by [Mr. Levandowski]” any claims brought by a Former Employer “arising out of or
8 alleged to arise out of” among other things, Mr. Levandowski’s breach of his “fiduciary duty or
9 duty of loyalty to [his] Former Employer” and/or “breach [] of any non-solicitation, non-
10 competition, confidentiality or similar restrictive covenant or agreement” between him and a
11 Former Employer. Ex. A at § 2.1(a).

12 150. As defined in the Indemnification Agreement, “Expenses” includes reasonable
13 attorneys’ fees, costs associated with defense against a Former Employer’s claim, and any
14 awards, judgments, or any amounts paid or to be paid in settlement of Google’s claims. *Id.* at 3.

15 151. Under Section 2.3 of the Indemnification Agreement, Uber is required to advance
16 payment for Expenses within a set period following a request for advancement.

17 152. On March 6, 2020, Mr. Levandowski requested that Uber advance payment for
18 Google’s judgment and the attorneys’ fees and costs Mr. Levandowski had incurred between
19 September 26, 2019 and February 29, 2020 as Expenses under Section 2.3.

20 153. Uber has refused to advance payment for the Expenses requested in the March 6
21 Request and continues to refuse to pay for any Expenses.

22 154. Mr. Levandowski has fully performed his obligations under the Indemnification
23 Agreement.

24 155. In the Indemnification Agreement, Uber agreed that Mr. Levandowski would be
25 irreparably harmed by Uber’s failure to indemnify him against a claim by Google and that
26 monetary damages would be an inadequate remedy. *See id.* at § 3.11. Uber also agreed that Mr.
27 Levandowski may seek specific performance to enforce Uber’s obligations under the
28 Indemnification Agreement. *See id.*

1 156. Moreover, Mr. Levandowski has been irreparably harmed by Uber's continued
2 breach of the Indemnification Agreement. By way of example only, Uber's breach of the
3 Indemnification Agreement directly caused Mr. Levandowski to have to file this bankruptcy
4 proceeding. The parties to the Indemnification Agreement specifically agreed that disputes
5 regarding reimbursement of payments made under the Indemnification Agreement would not
6 take be resolved until after Uber has satisfied its obligations to pay any final judgment and the
7 Expenses Mr. Levandowski incurred. Uber's breach has materially impacted Mr. Levandowski's
8 ability to continue to pursue litigation against Google and Uber.

9 157. Any such action for specific performance may be filed in a state or federal court
10 located in the City and County of San Francisco. *See id.* § 3.5.

11 158. The Indemnification Agreement was reasonable and supported by adequate
12 consideration in the Indemnification Agreement itself as well as in the overall transaction for
13 Uber to acquire Otto.

14 159. A mutuality of remedies exists as either party is able to adjudicate the issue of
15 whether an Indemnified Claim is an Excluded Claim and have agreed to seek resolution of
16 whether any claim is an Excluded Claim in this proceeding. .

17 160. The contract is sufficiently definite in requiring that Uber must first pay for all
18 Expenses, including payment of any awards and judgments or posting any appeal bond, and may
19 only seek reimbursement of any Expenses following resolution of an Indemnified Claim through
20 either settlement or a final, non-appealable judgment.

21 161. Therefore, Mr. Levandowski seeks to enforce by this action the terms Uber agreed
22 to in the Indemnification Agreement—that Uber pay for the Expenses requested on March 6,
23 2020 as well as payment of Google's judgment and the attorneys' fees and costs incurred by Mr.
24 Levandowski thus far, as well as any post-judgment interest which has or will accrue, and all
25 other Expenses that Mr. Levandowski has and will incur.

26 //

27 //

28 //

1 **COUNT III**

2 **(Breach of Indemnification Agreement)**

3 162. Mr. Levandowski incorporates by reference the preceding paragraphs as if fully
4 stated herein.

5 163. On April 11, 2016, Mr. Levandowski and Uber entered into the Indemnification
6 Agreement wherein Uber agreed to indemnify Mr. Levandowski for “any claim that has arisen
7 out of or resulted from any Pre-Signing Bad Acts . . . committed by [Mr. Levandowski]” arising
8 out of the facts or circumstances that were part of the Stroz investigation. Ex. A at 1-2.

9 164. Specifically, Uber agreed to “indemnify and hold harmless [Mr. Levandowski] . . .
10 to the maximum extent permitted by applicable law . . . from and against any and all Expenses
11 incurred by [Mr. Levandowski]” any claims brought by a Former Employer “arising out of or
12 alleged to arise out of” among other things, Mr. Levandowski’s breach of his “fiduciary duty or
13 duty of loyalty to [his] Former Employer” and/or “breach [] of any non-solicitation, non-
14 competition, confidentiality or similar restrictive covenant or agreement” between him and a
15 Former Employer. Ex. A at § 2.1(a).

16 165. As defined in the Indemnification Agreement, “Expenses” includes reasonable
17 attorneys’ fees, costs associated with defense against a Former Employer’s claim, and any
18 awards, judgments, or any amounts paid or to be paid in settlement of Google’s claims. *Id.* at 3.

19 166. Under Section 2.3 of the Indemnification Agreement, Uber is required to advance
20 payment for Expenses within fifteen Business Days of a request for advancement.

21 167. On March 6, 2020, Mr. Levandowski requested that Uber advance payment for
22 Google’s judgment and the attorneys’ fees and costs Mr. Levandowski had incurred between
23 September 26, 2019 and February 29, 2020 as Expenses under Section 2.3.

24 168. Uber has refused to advance payment for the Expenses requested in the March 6
25 Request. Mr. Levandowski has paid many of the Expenses since Uber refused to advance
26 payment.

27 169. Mr. Levandowski has fully performed his obligations under the Indemnification
28 Agreement.

170. As a result of Uber's refusal to honor its obligations under the Indemnification Agreement, Mr. Levandowski has suffered damages at least in the amount of the Expenses he has paid and will be required to pay to continue funding this litigation against Uber, the cost of the chapter 11 proceedings and this adversary proceeding and having to liquidate assets in the middle of a pandemic to continue to pursue his rights under the Indemnification Agreement and in challenging Google's judgment.

COUNT IV

(Declaratory Judgment – Uber's Rescission Claim)

171. Mr. Levandowski incorporates by reference the preceding paragraphs as if fully stated herein.

172. In the Proof of Claim, Uber identifies itself as a creditor based on its purported rescission of the Indemnification Agreement.

173. In addition, Uber has refused to pay Expenses due under the Indemnification Agreement because of the purported rescission.

174. Mr. Levandowski contends that Uber waived any right to rescind because it expressly confirmed and ratified the Otto Trucking Merger Agreement, one key component of the April 11, 2016 transactions, and thereby ratified the transaction Uber claims it was fraudulently induced into entering.

175. Mr. Levandowski also contends that Uber also impliedly waived, is estopped from asserting, and/or ratified any alleged fraudulent inducement on which Uber's purported rescission is based by entering into an amendment of the transaction Uber alleges it was fraudulently induced to enter into.

176. Mr. Levandowski further contends that Uber's rescission claim is barred by its unreasonable delay in rescinding the Indemnification Agreement, failure to return consideration provided, and actions by Uber that are inconsistent with a claim for rescission as described hereinabove.

177. Uber has not returned any consideration it received under the Indemnity Agreement, including Mr. Levandowski's devices, which it continues to retain through Stroz, as

1 well as the consideration received under the full transaction for the Otto acquisition. Such failure
2 is fatal to any rescission claim, especially where, as here, Uber's refusal or inability to return the
3 consideration it received is due to its delay in exercising any purported right to rescission.

4 178. To the extent that Uber's ability to return the consideration received is impossible,
5 this impossibility is due to Uber's delay in exercising the purported rescission after it controlled
6 Mr. Levandowski's defense and settlement ability for years and benefited from Mr.
7 Levandowski's cooperation with his defense and Uber's defense in the Waymo action.

8 179. Uber has also ratified any purported fraud and acted in ways inconsistent with
9 rescission, including by affirming its obligations under the Indemnification Agreement in its
10 public filings.

11 180. Uber's performance under the Indemnification Agreement for years and belated
12 rescission of that agreement has substantially prejudiced Mr. Levandowski.

13 181. Finally, upon information and belief, Uber has released any claim for rescission as
14 part of its release in the Waymo Settlement.

15 182. As a result of the acts described herein, a live controversy exists as to whether
16 Uber has a right to rescind and whether its purported rescission is effective.

17 183. This issue is ripe for determination and requires a declaration as to Uber's right to
18 rescind the Indemnification Agreement and whether Uber is a proper creditor in the Chapter 11
19 Case.

20 184. Mr. Levandowski therefore seeks a declaration that Uber has no right to rescind
21 the Indemnification Agreement.

22 **COUNT V**

23 **(Declaratory Judgment and Damages: Rescission of Otto Transaction)**

24 185. Mr. Levandowski incorporates by reference the preceding paragraphs as if fully
25 stated herein.

26 186. As shown herein, Mr. Levandowski denies that Uber has any right to rescind the
27 Indemnity Agreement and Mr. Levandowski seeks a declaratory judgment regarding Uber's
28 rescission claim/defense.

1 187. Alternatively, if the Court determines that Uber has rescinded the Indemnification
2 Agreement, the entirety of the Otto transaction must also be rescinded and all consideration Uber
3 received from the Otto transaction must be returned to Mr. Levandowski.

4 188. In agreeing to sell Otto to Uber and lead Uber's self-driving car program, Mr.
5 Levandowski conveyed repeatedly to Uber's representatives that he was concerned that Google
6 would sue him. Because of these concerns, Uber agreed to provided indemnity as key and
7 indivisible part of the Otto transaction and as an inducement to Mr. Levandowski to sell Otto to
8 Uber. Mr. Levandowski would not have entered into the Otto transaction without the Indemnity
9 Agreement because of his well-founded fear of litigation against him by Google.

10 189. For this reason, on April 11, 2016, Uber and Mr. Levandowski executed
11 documents for the acquisition of Otto, including the Indemnification Agreement. All of the
12 agreements executed on April 11, 2016 are part of one single transaction that can not be divided.

13 190. Uber's rescission of the Indemnification Agreement necessarily requires rescission
14 of the entire Otto transaction, including returning all consideration related to the transaction,
15 including the intellectual property Uber received from its acquisition of Otto.

16 191. Should the Court determine that Uber effectively rescinded the Indemnification
17 Agreement, a live controversy exists as to whether Uber's rescission also rescinds the Otto
18 transaction and requires return of all consideration Uber received from that transaction.

19 192. Mr. Levandowski therefore seeks a declaration that Uber has no right to rescind
20 the Indemnification Agreement without also rescinding the Otto transaction and returning all
21 consideration received from that deal.

22 193. In addition, Mr. Levandowski seeks damages, including any consequential
23 damages, arising out of Uber's rescission of the Otto transaction.

24 **COUNT VI**

25 **(Declaration As to Unenforceability of Amendment and Termination of** 26 **Otto Trucking Agreement as to Anthony Levandowski)**

27 194. Mr. Levandowski incorporates by reference the preceding paragraphs as if fully
28 stated herein.

1 195. Mr. Levandowski is a party to the Otto Trucking Agreement, including as to
2 Section 5.4 and 5.11.

3 196. Section 5.4 allowed Mr. Levandowski to form a new trucking company and to
4 obtain the IP License from Uber if Uber failed to satisfy its funding obligations to Otto Trucking
5 in the three years after closing on that transaction.

6 197. Section 5.11 allowed Mr. Levandowski to form a new trucking company and
7 demand that Uber provide him with the IP License for use in the new trucking company if Uber
8 terminated the Otto Trucking Agreement after acquiring Otto.

9 198. Uber closed on its acquisition of Otto on August 18, 2016.

10 199. In November 2017, Uber provided notice that it was exercising its option to
11 acquire Otto Trucking.

12 200. After providing notice, Uber stalled the closing of the Otto Trucking acquisition.

13 201. Upon information and belief, Uber stalled the closing of the Otto Trucking
14 acquisition so that it could work out a settlement with Waymo/Google in the trade secrets action.
15 During that time, Uber was controlling Mr. Levandowski's defense, including regarding
16 settlement.

17 202. Upon information and belief, Uber agreed in the Waymo settlement to terms that
18 gave away Mr. Levandowski's rights.

19 203. Upon information and belief, because of its agreement in the Waymo Settlement to
20 never hire or do business with Mr. Levandowski again, Uber continued to delay the Otto
21 Trucking closing and told Mr. Levandowski that it would not close the transaction if he was still
22 part of the company and would not in any event give him the IP license.

23 204. Uber threatened to leave the transaction in limbo and force Mr. Levandowski to
24 engage in protracted litigation to enforce his rights under the Otto Trucking Merger Agreement.

25 205. Faced with the prospect of litigating immediately with a multi-billion dollar
26 company in the midst of other active litigation—the defense of which was under Uber's
27 control—and a criminal investigation, Uber's actions coerced Mr. Levandowski to resign from
28 Otto Trucking and to sell his interest in the company at a significant discount.

1 216. In addition to requiring the Indemnification Agreement, Mr. Levandowski also
2 conditioned his sale of Otto to Uber on Uber's support for his autonomous trucking business.
3 Uber agreed to this condition in the Otto Trucking Agreement.

4 217. Under the Otto Trucking Agreement, Uber received an option to acquire Otto
5 Trucking.

6 218. Uber closed on its acquisition of Otto on August 18, 2016. The effect of the
7 acquisition of Otto obligated Uber to support Mr. Levandowski's trucking business as the only
8 scenario where Uber could walk away from Otto Trucking was if Uber did not acquire Otto. For
9 example, even if Uber terminated the Otto Trucking Agreement after acquired Otto, Uber was
10 required to give Mr. Levandowski an exclusive license to use Uber's self-driving technology in
11 the field of trucking to form a new trucking company outside of Uber. The terms of the
12 exclusive license are described at Exhibits E and F of the Otto Trucking Agreement.

13 219. In late November 2017, Uber exercised its right to acquire Otto Trucking by
14 providing notice of its decision.

15 220. On August 5, 2018, Uber terminated the Otto Trucking Agreement.

16 221. Uber hid its termination of the Otto Trucking Agreement from Mr. Levandowski
17 for over two years, finally disclosing its purported termination of the Otto Trucking Agreement
18 only recently in its answer to the Complaint.

19 222. Under Section 5.11, because Uber acquired Otto and obtained the benefits of that
20 acquisition, Uber is required to provide a license to these patents and any other patents or
21 intellectual property related to autonomous trucking to Mr. Levandowski for use in the field of
22 trucking.

23 223. Mr. Levandowski seeks specific performance of Uber's obligation under Section
24 5.11. Specifically, Mr. Levandowski seeks an order requiring Uber to provide a company
25 formed by Mr. Levandowski the IP License in a form consistent with Exhibit E and F of the Otto
26 Trucking Agreement.

1 224. A search for autonomous driving related patents yielded over hundreds of results
2 for patents owned by Uber. **Exhibit Q** is a copy of the patent search result for Uber's self-
3 driving related patents.

4 225. Mr. Levandowski has performed all obligations under the Otto Trucking
5 Agreement.

6 226. Although Mr. Levandowski contends that the ten business day period referenced in
7 Section 5.11 relates to how "promptly" his right to the IP License becomes available after
8 termination of the Otto Trucking Agreement and that there is no deadline to provide such
9 notices, on September 21, 2020, within ten business days of receipt of the Termination
10 Agreement, Mr. Levandowski provided Uber with written notice that he is exercising his right to
11 form the new trucking company, and has requested that Uber provide the IP License and work
12 together to sign and prepare organization documents for the new company. **Exhibit R** is a copy
13 of the letter notifying Uber of Mr. Levandowski's election of the right to obtain the IP License.

14 227. Uber has refused to provide the requested license.

15 228. Mr. Levandowski will be irreparably harmed by Uber's refusal to provide the IP
16 License and to form the trucking company as agreed.

17 229. Uber received adequate consideration, at least in the form of its acquisition of
18 Otto, in exchange for agreeing to Mr. Levandowski's right to lead an autonomous trucking
19 business within Uber or with Uber's IP License.

20 230. A mutuality of remedies exists as the agreement provides for a method for
21 adjudicating disputes, including allowing either party to sue for specific performance.

22 231. The contract is sufficiently definite in requiring that Uber must provide the IP
23 License to Mr. Levandowski on terms consistent with Exhibits E and F of the Otto Trucking
24 Agreement if the Otto Trucking Agreement was terminated after Uber acquired Otto.

25 232. Therefore, Mr. Levandowski seeks an order from the Court requiring Uber to
26 provide the IP License as required by Section 5.11 of the Otto Trucking Agreement and to work
27 with Mr. Levandowski to form the new trucking company.

1 233. In the alternative, Mr. Levandowski seeks damages for Uber's breach of Section
2 5.11 of the Otto Trucking Agreement, including damages for the value of the IP License and
3 either the value of Uber Freight, which is estimated as \$4 billion once Uber closes on its latest
4 round of financing, and/or the trucking company he should have been able to form and operate
5 using the IP License and lost profits from that company.

6 **COUNT VIII**

7 **(Declaration Regarding Uber's Fiduciary Duty To Shut Down Uber Freight)**

8 234. Mr. Levandowski incorporates by reference the preceding paragraphs as if fully
9 stated herein.

10 235. In addition to requiring Uber to provide the IP License upon termination, Section
11 5.11 of the Otto Trucking Agreement also requires Uber to become a member of a new limited
12 liability trucking company formed by Mr. Levandowski.

13 236. Uber's membership interest was to be 50% of the then available shares.

14 237. The material terms of Uber's membership are provided in Exhibit F to the Otto
15 Trucking Agreement, referenced in Section 5.11.

16 238. Exhibit F addressed fiduciary duties of managers during the initial development of
17 the company, requiring that they owe the duties to the company and the holders of equity in that
18 company the same fiduciary duties that would be owed in a corporation until the company raises
19 at least \$17,500,000 in investments.

20 239. Exhibit F, however, does not contain any limitation or waiver of the statutory
21 fiduciary duties owed by members of the company to the company and other members.

22 240. As such, once formed, Uber owes the new trucking company and Mr.
23 Levandowski statutory fiduciary duties, including the duty not to compete with the company,
24 including by continuing to operate Uber Freight.

25 241. In its answer, Uber denies that Exhibit F contemplates that Uber would owe Mr.
26 Levandowski and the new trucking company fiduciary duties that would prevent it from
27 competing with the company.

242. As such, a controversy exists as to what fiduciary duties Uber will owe in the new trucking company to be formed consistent with the terms of Section 5.11 and Exhibit F of the Otto Trucking Agreement and whether Uber may continue to operate Uber Freight once that company is formed.

243. Mr. Levandowski requests a declaration as to Uber's obligations and fiduciary duties to Mr. Levandowski and the new trucking company as provided in Section 5.11 and Exhibit F of the Otto Trucking Agreement, including, Uber's obligation to shut down Uber Freight.

COUNT IX

(Breach of Covenant of Good Faith and Fair Dealing)

244. Mr. Levandowski incorporates by reference the preceding paragraphs as if fully stated herein.

245. In addition to receiving indemnity, Mr. Levandowski conditioned his sale of Otto on Uber supporting his autonomous trucking business. Uber agreed to that condition and on April 11, 2016, at the same time it executed the Otto Agreement, Uber executed the Otto Trucking Agreement.

246. The Otto Trucking Agreement includes an implied covenant of good faith and fair dealing. The implied covenant ensures that neither party may engage in arbitrary or unreasonable conduct and thereby prevent the other party from receiving the fruits of the bargain.

247. The intent of the parties for Mr. Levandowski to be able to continue to pursue the trucking business he left Google to start with Uber's support in exchange for Mr. Levandowski selling Otto to Uber.

248. This intent is reflected in the Otto Trucking Agreement as the only scenario where Uber could walk away from Otto Trucking and not support Mr. Levandowski's trucking business was if Uber did not acquire Otto.

249. After acquiring Otto, Uber had two options for supporting the trucking business. It could acquire Otto Trucking and appoint Mr. Levandowski as the non-executive chairman of that business.

1 250. In the alternative, Uber could terminate the acquisition of Otto Trucking, but
2 support an outside trucking venture started by Mr. Levandowski as an investor. Uber was
3 obligated to provide an exclusive license to its self-driving technology for Mr. Levandowski to
4 use in the field of trucking in exchange for membership in Mr. Levandowski's new company.
5 The IP License was an exclusive license for trucking, which barred Uber from competing with
6 Mr. Levandowski's trucking business. Uber's membership interest in Mr. Levandowski's new
7 company also prevented Uber from competing with that business based on the statutory duties
8 owed by members of an LLC.

9 251. Uber did neither.

10 252. Upon information and belief, Uber stalled the closing of the Otto Trucking
11 acquisition so that it could work out a settlement with Waymo/Google in the trade secrets action.
12 During that time, Uber was in control of Mr. Levandowski's defense and settlement prospects,
13 and had barred Mr. Levandowski from participating in the settlement discussion or discussing
14 settlement directly with Google.

15 253. Upon information and belief, because of its agreement in the Waymo Settlement to
16 never hire or do business with Mr. Levandowski again, Uber continued to delay the Otto
17 Trucking closing and told Mr. Levandowski that it would not close the transaction if he was still
18 part of the company and would not in any event give him the IP license.

19 254. Uber threatened to leave the transaction in limbo and force Mr. Levandowski to
20 engage in protracted litigation to enforce his rights under the Otto Trucking Merger Agreement.

21 255. Faced with the prospect of litigating immediately with a multi-billion dollar
22 company in the midst of other active litigation—the defense of which was under Uber's
23 control—and a criminal investigation, Uber's actions coerced Mr. Levandowski to resign from
24 Otto Trucking and to sell his interest in the company at a significant discount.

25 256. But Mr. Levandowski, as a Company Founder and in his individual capacity,
26 remained a party to the Otto Trucking Agreement with respect to Section 5.4 and 5.11 of that
27 agreement and a beneficiary of the remainder of the Otto Trucking Agreement independent of his
28 prior status as a unitholder of the company.

1 257. Uber and Otto Trucking agreed between them, without Mr. Levandowski's
2 agreement or consent, to terminate the Otto Trucking Agreement.

3 258. Uber and Otto Trucking hid the termination from him for two years.

4 259. Despite terminating the Otto Trucking Agreement after acquiring Otto, Uber
5 refused to provide Mr. Levandowski with the IP License, and in fact, Uber and Otto Trucking
6 agreed, without Mr. Levandowski's agreement or consent and without providing any
7 consideration, to terminate Mr. Levandowski's individual rights under the Otto Trucking
8 Agreement.¹

9 260. Uber and Otto Trucking then entered into a separate agreement whereby Uber
10 proceeded to acquire Otto Trucking and started Uber Freight without Mr. Levandowski, the
11 trucking business Uber had promised that Mr. Levandowski would lead.

12 261. In fact, the parties agreed in the New Trucking Agreement to terms intended to
13 keep Mr. Levandowski out of the company.

14 262. As a party to section 5.4 and 5.11 and as a beneficiary to the remainder of the Otto
15 Trucking Agreement, Mr. Levandowski has a right to enforce that agreement, including the
16 covenant of good faith and fair dealing.

17 263. To the extent that Mr. Levandowski has any obligations under that agreement, he
18 has satisfied them.

19 264. Uber's actions described herein were unreasonable, made in bad faith, and have
20 deprived Mr. Levandowski of the fruits of the bargain, including the agreed-to benefit of running
21 a trucking business with Uber's support.

22 265. By preventing Mr. Levandowski from obtaining the benefits of the Otto Trucking
23 Agreement, Uber has violated the implied covenant of good faith and fair dealing.

24 266. After Mr. Levandowski's forced divestment, Uber's refusal to provide the IP
25 License and for the new trucking company, and Uber's acquisition of Otto Trucking to form
26 Uber Freight, Uber continued to operate that business. Uber Freight has reported hundreds of
27

28 ¹ Mr. Levandowski contends, as alleged in Count VII that such agreement to terminate Mr.
Levandowski's rights was ineffective and unenforceable.

1 millions in revenue since its creation and Mr. Ron, who heads Uber Freight, stated that he and
2 Uber “think there is a very clear path to profitability.”

3 267. As a result of Uber’s breaches, Mr. Levandowski has suffered damages in an
4 amount to be proven at trial, which amount should be at least \$4.128 billion.

5 **COUNT X**

6 **(Objection to Claim)**

7 268. Mr. Levandowski incorporates by reference the preceding paragraphs as if fully
8 stated herein.

9 269. For the reasons set forth above, the Indemnity Agreement is not subject to
10 rescission and, if it had been, Uber waived its right to assert such remedy.

11 270. For the reasons set forth above, Uber is liable under the Indemnity Agreement to
12 advance his Expenses (as defined in the Indemnification Agreement).

13 271. For the reasons set forth above, Mr. Levandowski generally denies the evidentiary
14 bases upon which the Proof of Claim is based and specifically denies that (a) Uber was
15 fraudulently induced to enter into the Indemnity Agreement, (b) Mr. Levandowski failed to
16 comply with his obligations under the Indemnity Agreement, and (c) Uber’s obligations under
17 the Indemnity Agreement are subject to allocation as asserted in the Proof of Claim, which in
18 any event, cannot be adjudicated until after Uber satisfies its obligations under the
19 Indemnification Agreement.

20 272. For the reasons set forth above, any claim for offset or contribution is also
21 undermined by its active participation in the conduct at issue in the Waymo Action and the
22 Google arbitration as it (a) encouraged, if not directed, Mr. Levandowski to recruit Google
23 employees to join Otto and Uber, and (b) knew about Mr. Levandowski’s retention of Google
24 information and access of the one file at issue in the plea agreement after he left Google.

25 273. For the reasons set forth above, Mr. Levandowski denies that Uber has any right to
26 contribution from Mr. Levandowski for the Waymo settlement. Waymo did not prove that Mr.
27 Levandowski misappropriated any trade secrets in that case. As for the one file that Mr.
28 Levandowski accessed after he left Google, Uber was well aware of that conduct and proceeded

1 to acquire Mr. Levandowski's company and work with him anyway. Moreover, Mr.
2 Levandowski's guilty plea that resulted in a total restitution amount of approximately \$750,000
3 further demonstrates the unreasonableness of Uber's decision to settle with Waymo for
4 \$245,000,000 in stock, among other consideration. In addition, to the extent that any trade
5 secrets were taken and used at Uber, those trade secrets did not come from Mr. Levandowski, but
6 rather a different former Google employee. Indeed, as admitted in Uber's public statements,
7 Uber's self-driving software—an area that Mr. Levandowski did not work on at Google or
8 Uber—contained problematic functions that will require it to enter into a license agreement with
9 Waymo for use of Waymo's intellectual property. Upon information and belief, the Waymo
10 Settlement, entered into after discovery of possible misconduct relating to Uber's source code,
11 settled issues relating to theft of trade secrets by individuals who are not Mr. Levandowski.

12 274. Mr. Levandowski therefore seeks disallowance in full of the Proof of Claim.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Mr. Levandowski prays for the following relief:

- 15 1. A declaration that Uber has released all claims and defenses against Mr.
16 Levandowski alleged in the Proof of Claim and Amended Answer and
17 Counterclaims;
- 18 2. An order enforcing the Indemnification Agreement and requiring Uber pay all
19 Expenses Mr. Levandowski has incurred and will incur, including Google's
20 judgment and any interest that has accrued;
- 21 3. Damages for Uber's breach of the Indemnification Agreement;
- 22 4. A declaration that Uber's purported rescission of the Indemnification Agreement is
23 ineffective and invalid;
- 24 5. In the alternative to paragraph 4, a declaration that if Uber's rescission of the
25 Indemnification Agreement is effective, the entire Otto transaction is rescinded
26 and all consideration received from that transaction must be returned;
- 27 6. A declaration that Uber's attempt to eliminate Mr. Levandowski's rights under
28 Section 5.11 of the Otto Trucking Agreement is unenforceable;

7. An order requiring Uber to specifically perform its obligations under Section 5.11 of the Otto Trucking Agreement to provide Mr. Levandowski the IP License and to form the new trucking company or, in the alternative, damages for the value of that license and the valuation of Uber Freight and/or the trucking business that would have been formed but for Uber's breaches and lost profits from that business;
8. A declaration that Uber Freight must be shut down;
9. Damages in an amount to be proven at trial for Uber's breach of the express and implied terms of the Otto Trucking Agreement;
10. An order disallowing in full the proof of claim;
11. Prejudgment and post-judgment interest;
12. Attorneys' fees and costs incurred by Mr. Levandowski pursuant to Section 3.2 of the Indemnification Agreement and Section 8(n) of the Otto Trucking Agreement, including fees incurred in the Bankruptcy proceeding due to Uber's failure to advance expenses; and

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Respectfully submitted,

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